

**REMARKS**

This responds to the Office Action dated March 26, 2007. Claims 14, 18 and 31 are amended, no claims are canceled, and no claims are added; thus claims 14-46 remain pending in this application.

**Double Patenting Rejection**

Claims 14-23 and 30-40 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of co-pending Application No. 11/369,142 and over claims 1-27 of Application No. 11/379,742. Claims 14-23, 30-34 and 37-39 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,493,579. Claims 14-23, 30-34 and 37-39 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 7 and 16 of U.S. Patent No. 6,522,925.

Applicant will appropriately address the rejections, including any provisional rejections, when the claims of this application are otherwise found to be in condition for allowance.

Applicant continues to respectfully submit that the rejection has not specifically applied the language of the claims in the present application against the language of the claims in either U.S. Patent No. 6,522,925 ('925) or Application 11/366,142. In the '925 patent, for example, claim 7 depends on claim 1, and claim 16 depends claim 9. Applicant respectfully requests the Examiner to compare the combination of claims 1 and 7 of the '925 patent to claim 14 of the present application. Claim 1 of the '925 patent, for example, recites, among other things, a button on the display screen, where the button is adapted to enable or disable a rate smoothing algorithm in an implantable pulse generator and a communication circuit adapted to send a signal under the control of the button to enable or disable rate smoothing in the implantable pulse generator. The rejection has not addressed this button in the analysis of obviousness-type double patenting.

Applicant notes that the Office states that the claims are not patentably distinct from each other because the patented claims are narrower and meet the limitations of this applicant's broader claims. Applicant makes no representation regarding the breadth or narrowness of these claims. However, as provided in MPEP 804, Applicant submits that domination and double

patenting should not be confused. Domination by itself cannot support a double patenting rejection.

§112 Rejection of the Claims

Claims 18-30 were rejected under 35 U.S.C. § 112, second paragraph. Applicant submits the amendments do not add new matter and respectfully requests reconsideration and withdrawal of the rejection.

§102 Rejection of the Claims

Claims 14-16 were rejected under 35 U.S.C. § 102(b) as being anticipated by Snell (U.S. Patent No. 5,716,382). Applicant respectfully traverses the rejection.

The specification and the claims (e.g. claims 14-15) distinctly use the terms “clinical rhythm, detection enhancement, and parameter. As addressed in Applicant’s specification, for example, appropriate enhancements can be programmed by a process of selection (e.g. *Specification* at page 5, line 14, lines 7-19). A user-provided selection of a clinical rhythm is received (e.g. *Specification* at page 6, lines 13-17), the clinical rhythm is associated with one or more available detection enhancements that are made available based on the selected clinical rhythm, where the available detection enhancements are available for selection by the user to add specificity for determining when to deliver shock therapy for the selected clinical rhythm (e.g. *Specification* at page 6, lines 18-21). Each detection enhancement can include at least one modifiable parameter (e.g. *Specification* at page 6, lines 21-24).

The cited portions of Snell relates to a hierarchy of programmable parameters divided into key and subordinate parameters. Applicant submits the rejection fails to show the Snell reference specifically teaches or suggests all the elements. For example, the rejection fails to show a selected clinical rhythm and at least one parameter forming at least a portion of a detection enhancement. Specifically, Applicant submits the rejection, as well as the cited portions of the Snell reference, among other things, fail to distinguish a detection enhancement from a parameter, as claimed. For example, page 4 line 7 of the Office Action improperly equates parameters and detection enhancements.

Should any of the rejections be maintained, Applicant respectfully requests that the language of the claims be applied against the references, particularly identifying each portion of the reference relied upon to show each element of the claims.

With respect to independent claim 14, Applicant is unable to find in Snell, among other things, a showing or suggestion of a programmer comprising a first and second module as recited in the claim. The recited first module receives a user-provided selection of a clinical rhythm. The clinical rhythm is associated with two or more available detection enhancements that are made available based on the selected clinical rhythm for selection by the user to add specificity for determining when to deliver shock therapy for the selected clinical rhythm. The recited first module is preprogrammed to provide a selection of at least one detection enhancement from the two or more available detection enhancements that are associated with the clinical rhythm. The recited second module receives a user-provided selection to modify the selection of the at least one detection enhancement provided by the preprogrammed first module to at least one other detection enhancement from the two or more available detection enhancements that are associated with the clinical rhythm.

Claims 15 and 16 depend on independent claim 14. These dependent claims recite additional features, and are believed to be allowable at least for the reasons provided with respect to claim 14. Further, with respect to claim 15, Applicant is unable to find a first module preprogrammed to provide a setting for at least one parameter for the at least one detection enhancement, and a second module that receives a user-provided selection to modify the setting for the at least one parameter. Additionally, with respect to claim 16, Applicant is unable to find a communication module for communicating with a pulse generator to program the pulse generator with the at least one detection enhancement.

Withdrawal of the rejection, and reconsideration and allowance of the claims are respectfully requested.

§103 Rejection of the Claims

Claims 17-21, 30-34, 37 and 39 were rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Snell (U.S. Patent No. 5,716,382). Applicant respectfully traverses the rejection.

Claim 17 depends on independent claim 14 and is believed to be in a condition for allowance at least for the reasons provided with respect to independent claim 14. Further, Applicant is unable to find a number of layered screen displays where a first screen provides a capability to activate at least one detection enhancement seeded with at least one parameter, and a second screen provides a capability to change the at least one parameter for the at least one detection enhancement. Applicant respectfully requests withdrawal and reconsideration and allowance of claim 17.

With respect to independent claim 18, Applicant is unable to find in Snell, among other things, the recited selection module and the recited parameter modification module. Applicant cannot find a selection module that receives a selection of a clinical rhythm from a user where the clinical rhythm is associated with at least two available detection enhancements that include at least one parameter. Applicant cannot find a selection module that includes artificial intelligence adapted to select a detection enhancement from the at least one available detection enhancement and provide a setting for the at least one parameter for the selected detection enhancement. Applicant cannot find a selection module that receives a user provided selection of at least one other detection enhancement from the at least two available detection enhancements in place of the detection enhancement selected by artificial intelligence. Applicant cannot find a parameter modification module that receives a user input to change the setting for the at least one parameter of the selected detected enhancement. Claims 19-21 and 30 depend, either directly or indirectly, on independent claim 18. These dependent claims recite additional features, and are believed to be allowable at least for the reasons provided with respect to claim 18. Withdrawal of the rejection, and reconsideration and allowance of the claims are respectfully requested with respect to claims 18-21 and 30.

With respect to independent claim 31, Applicant is unable to find in Snell, among other things, a programmer that comprises the recited control logic and the recited display. Applicant cannot find in Snell control logic that programs the pulse generator to detect and provide therapy for at least one clinical rhythm, programs the pulse generator with at least one selected detection enhancement from the available detection enhancements associated with the at least one clinical rhythm, and programs the pulse generator with at least one parameter for the at least one detection enhancement. Applicant cannot find in Snell a display that provides a number of

screen displays used by the user to select the at least one clinical rhythm and modify the selection of the at least one detection enhancement from at least one preprogrammed detection enhancement to at least one other detection enhancement from the available detection enhancements associated with the at least one clinical rhythm.

Claims 32-34, 37 and 39 depend, either directly or indirectly, on independent claim 31. These dependent claims recite additional features, and are believed to be allowable at least for the reasons provided with respect to claim 31. Additionally, with respect to claim 32, Applicant is unable to find, among other things, in the cited portions of Snell, a programmer where the at least one detection enhancement is automatically seeded with a value for the at least one parameter, and the number of screen displays are used by the user to change the value for the at least one parameter. Withdrawal of the rejection, and reconsideration and allowance of the claims are respectfully requested.

*Claims 22-23 and 38*

Claims 22-23 and 38 were rejected 35 U.S.C. § 103(a) as being unpatentable over Snell (U.S. Patent No. 5,716,382) as applied to the claims above.

Claims 22 and 23 are dependent upon independent claim 18. Claim 38 is dependent upon independent claim 31. These dependent claims recite additional features, and are believed to be allowable at least for the reasons provided with respect to independent claims 18 and 31. Withdrawal of the rejection, and reconsideration and allowance of the claims are respectfully requested.

*Allowable Subject Matter*

Applicant acknowledges, with thanks, the indication of allowable subject matter.

Claims 41-46 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 41-46 depend either directly or indirectly upon independent claim 31 and are asserted to be in a condition for allowance at least for the reasons provided for independent claim 31.

Claims 24-29 were indicated to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, as set forth in the Office Action. Claims 24-29 depend either directly or indirectly upon independent claim 18 and are asserted to be in a condition for allowance at least for the reasons provided for independent claim 18.

### CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6960 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date 7-26-07

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 26 day of July 2007.

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